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**DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES**

CHAPTER 59

**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN (WIC)**

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Subchapter 1

General Program Administration

37. 59. 101 PURPOSE OF RULES (1) The purpose of the rules in subchapters 1 and 2 of this chapter is to provide a clear procedural framework under which the department administers the federal special supplemental food program for women, infants, and children, the so-called "WIC" program which is sponsored by the food and nutrition service (FNS) of the United States department of agriculture (USDA) and which has been administered in Montana by the department of public health and human services since approximately 1974. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; TRANS, from DHES, 2001 MAR p. 982.)

37.59.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Administrative and program services costs" means those direct and indirect costs, exclusive of food costs, as defined in 7 CFR 246.14(c), which the department determines to be necessary to support local agency program operations. Administrative and program services costs include, but are not limited to, the costs of program administration, start-up, monitoring, auditing, the development of and accountability for food delivery systems, nutrition education, outreach, certification, and developing and printing food instruments.

(2) "Affirmative action plan" means that portion of the department plan which describes how the program will be initiated and expanded within the department's jurisdiction in accordance with 7 CFR 246.4(a).

(3) "Breastfeeding women" means women up to 1 year postpartum who are breastfeeding their infants.

(4) "Caseload" means the number of persons certified by the local agencies, eligible and participating in the WIC program at any point in time. Persons certified eligible but wait-listed are not considered to be participating in the WIC program, and therefore are not included when the department assigns caseload limits or tallying caseload being carried at a point in time.

(5) "Categorical eligibility" means persons who meet the definitions of pregnant women, breastfeeding women, postpartum women, or infants or children.

(6) "Certification" means the application of criteria and procedures to assess and document each applicant's eligibility for the program.

(7) "Children" means persons who have had their 1st birthday but have not yet attained their 5th birthday.

(8) "Client" means a WIC program participant.

(9) "Clinic" means a facility where applicants are certified.

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(10) "Competent professional authority" means an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the department may authorize to serve as a competent professional authority: physicians, nutritionists (bachelor's or master's degree in nutritional sciences, community nutrition, clinical nutrition, dietetics, public health nutrition, or home economics with emphasis in nutrition), dietitians, registered nurses, physician's assistants (certified by the national committee on certification of physician's assistants, or certified by the state medical certifying authority), or state or local medically trained health officials. This definition also applies to an individual who is not on the staff of the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on the staff of the local agency.

(11) "Days" means calendar days.

(12) "Disqualification" means the act of ending the program participation of a participant, authorized food vendor, or local agency, whether as a punitive sanction or for administrative reasons.

(13) "Dual participation" means simultaneous participation in the program in more than one WIC clinic.

(14) "Fair hearing" means the procedure through which an individual may appeal a department or local decision which results in denial of program participation, or suspension or termination from the program.

(15) "Family" means a group of related or non-related individuals who are not residents of an institution but who are living together as one economic unit.

(16) "Food costs" means the costs of supplemental foods, determined in accordance with 7 CFR 246.14(b).

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(17) "Food delivery system" means the method used by the department and local agencies to provide supplemental foods to participants.

(18) "Food instrument" means a voucher, check, coupon, or other document which is used by a participant to obtain supplemental foods.

(19) "Food package" means supplemental foods prescribed by a competent professional authority for a WIC participant to meet demonstrated nutritional needs.

(20) "Food vendor" means a local grocer, dairy, or other merchant who, through a signed agreement with the local agency, provides WIC foods in exchange for the WIC voucher.

(21) "Health services" means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

(22) "Infants" means persons under 1 year of age.

(23) "Initial visit" means the first time a person visits a WIC clinic to request program benefits, whether by an in-person inquiry or by a visit for an appointment previously established by telephone.

(24) "Local agency" means:

(a) a public or private, nonprofit health or human service agency which provides health services, either directly or through contract, in accordance with 7 CFR 246.5;

(b) an Indian health service unit;

(c) an Indian tribe, band, or group recognized by the United States department of the interior which operates a health clinic or is provided health services by an Indian health service unit; or

(d) an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the United States department of the interior, which operates a health clinic or is provided health services by an Indian health service unit.

(25) "Members of populations" means persons with a common special nutritional need who do not necessarily reside in a specific geographic area, such as off-reservation Indians or migrant farmworkers and their families.

(26) "Migrant farmworker" means an individual whose principal employment is in agriculture on a seasonal basis, and who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode.

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(27) "Monthly participation" means a total number of clients actually receiving benefits in any month.

(28) "Nonprofit agency" means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

(29) "Nutrition counseling" means individualized professional guidance to assist a person in adjusting his/her daily food consumption to meet his/her health needs.

(30) "Nutrition education" means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(31) "Nutrition services" means nutrition intervention planned for and provided to a client, such as assessment of nutritional health status, counseling, provision of nutrition information, prescription of a food package, referral to other health, financial, or social services, and evaluation of change in behavior and nutritional health status.

(32) "Nutritional risk" means:

(a) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;

(b) their documented nutritionally related medical conditions;

(c) dietary deficiencies that impair or endanger health; or

(d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

(33) "Nutritionist" means a professional who meets the academic and experience requirements described in 37-25-102, MCA.

(34) "Participants" means pregnant women, breastfeeding women, postpartum women, infants, and children who are receiving supplemental foods or food instruments under the program.

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(35) "Participation" means the number of persons who have received supplemental foods or food instruments during a reporting period.

(36) "Postpartum women" means women up to 6 months after termination of pregnancy.

(37) "Potential participants" means persons not certified on WIC but who are applying for WIC services, or who have been determined by some statistical means to be eligible for WIC services.

(38) "Poverty income guidelines" means the poverty income guidelines prescribed by the United States department of health and human services. These guidelines are adjusted annually by the department of health and human services, with each annual adjustment effective July 1 of each year. The poverty income guidelines prescribed by the department of health and human services are used for the Montana WIC program.

(39) "Pregnant women" means women determined to have one or more embryos or fetuses in utero.

(40) "Priority system" means the ranking applied to persons on a waiting list to ensure that those at highest nutritional risk are the first ones chosen to fill vacancies.

(41) "Program" means the special supplemental food program for women, infants and children (WIC), authorized by section 17 of the Child Nutrition Act of 1966, as amended.

(42) "Reallocation" means the process by which the USDA monies are moved from one state agency which is spending at a lower rate and given to another state agency that is able to spend the money more rapidly due to larger caseloads and a similar process used by the department among local agencies.

(43) "Registered dietitian" means a professional who meets the academic and experience requirements described in 37-21-302, MCA.

(44) "Retail purchase system" means a system in which the participant obtains WIC foods through an authorized food vendor, i.e., grocer or dairy.

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(45) "Satellite" means a WIC program operated by another WIC program which has primary administrative responsibility for a program and contracts directly with the department. A satellite differs from a site in that it is located outside the defined project area, i.e., county or reservation.

(46) "Site" means a single clinic offering services to WIC participants within a defined project area that may contain more than one clinic.

(47) "Staffing pattern" means the ratio of WIC staff needed to the number of participants served.

(48) "State plan" means the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), a plan of program operation and administration that describes the manner in which the department intends to implement and operate all aspects of program administration within its jurisdiction in accordance with 7 CFR 246. 4.

(49) "Supplemental foods" means those foods containing nutrients determined to be beneficial for pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by 7 CFR 246. 10.

(50) "Voucher" means a check-like document which is traded by WIC participants for food at their local food vendors.

(51) "Waiting list" means a list of applicants waiting to be accepted in the WIC program when vacancies occur.

(52) The department hereby incorporates herein by reference the following:

(a) 7 CFR 246. 4, which is a federal agency WIC regulation concerning state agency program operations and administration;

(b) 7 CFR 246. 5, which is a federal agency WIC regulation concerning selection of local agencies;

(c) 7 CFR 246. 10, which is a federal agency WIC regulation concerning the supplemental foods prescribed for eligible persons;

(d) 7 CFR 246. 14(b) and (c), which is a federal agency WIC regulation concerning the allowable administrative and program services costs;

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(e) 7 CFR Part 3015, which is a federal agency regulation containing the USDA's uniform federal assistance regulations. Part 3015 implements the policies established by the office of management and budget (OMB) in circulars A-21, A-87, A-102, A-110, A-122, and A-128, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977;

(f) the poverty income guidelines contained in volume 54 of the Federal Register, issue 89 (May 10, 1989);

(g) section 17 of the Child Nutrition Act of 1966, 42 U. S. C. 1771, et seq., as amended; and

(h) the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), which is a comprehensive summary of applicable federal regulations, procedures, and forms used by the department.

(i) Copies of the above materials may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

Rules 03 and 04 reserved

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37. 59. 105 INCORPORATIONS BY REFERENCE (1) This chapter of ARM Title 37 establishes a state WIC program which is essentially the equivalent of the federal WIC program.

(2) In view of the requirements of equivalence with the federal program and in order to simplify the rulemaking process and make the rules less cumbersome, the department has relied heavily upon incorporation and adoption by reference of federal requirements as set forth in Title 7 of the Code of Federal Regulations (CFR).

(3) Where the department has adopted a federal regulation by reference, the following shall apply:

(a) References in the federal regulations to "Administrator" or "Regional Administrator", or the like, should be read to mean "department".

(b) Where the department incorporates by reference a subpart of a federal regulation, both the subpart and its constituent sections and subsections are also incorporated by reference.

(4) All of the incorporations by reference of federal agency rules are listed below by state rule number, together with the CFR edition date. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

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<u>State Rule</u> <u>37. 59.</u>	<u>Federal Rule Incorporated</u> <u>7 CFR . . .</u>	<u>CFR Edition Date</u>
102	246. 4, 246. 5, 246. 10, 246. 14(b) & (c); and Part 3015	January 1, 1989
109	Parts 15, subparts A & B; Part 246; and Part 3015	January 1, 1989
201	246. 5(a) through (e)	January 1, 1989
202	246. 6	January 1, 1989
203	246. 5(d) (1) and 246. 18	January 1, 1989
301	246. 12(e) through (o)	January 1, 1989
302	246. 12(f)	January 1, 1989
303	246. 18	January 1, 1989
401	246. 9	January 1, 1989
402	246. 18	January 1, 1989

(5) All material which is incorporated by reference may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

Rules 06 through 08 reserved

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37. 59. 109 PROGRAM ADMINISTRATION AND GUIDANCE (1) As the state agency to which the USDA has delegated the administration of the WIC program, the department is responsible for the effective and efficient administration of the program in accordance with the USDA program regulations set forth in 7 CFR Part 246, USDA's regulations governing the WIC program; 7CFR Part 15, subparts A and B, USDA's regulations governing nondiscrimination; and 7 CFR Part 3015, USDA's regulations governing the administration of grants.

(2) In addition to the documents referred to in (1) above, the department, as the state agency to which the USDA has delegated the WIC program, also receives numerous policies, forms, guidelines, and instructions from the USDA food and nutrition service (FNS) issued under the FNS directives management system. The department has assembled such policies, forms, guidelines, and instructions (and the state forms and guidelines required by such directives) into three department documents:

(a) the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), which is a comprehensive summary of applicable federal regulations (all of which are elsewhere incorporated in this chapter), procedures, and forms used by the department, and which is distributed to each participating local agency and is to be followed by each local agency in administering the program; and

(b) "Guidelines on Management and Operations of the WIC Program in Montana" (January 1988 edition), a series of instructions, guidelines, and interpretations developed by the USDA and periodically received by the department, to which the department refers in resolving management issues under the WIC program, including but not limited to financial management issues.

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(3) The department hereby adopts and incorporates herein by reference the following:

(a) 7 CFR Part 246, which are USDA regulations governing the WIC program;

(b) 7 CFR Part 15, subparts A and B, which are USDA regulations governing nondiscrimination;

(c) 7 CFR Part 3015, which are USDA regulations governing the administration of grants; and

(d) the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), which is a department handbook setting forth procedures, practices, and forms used for the implementation of the federal WIC program in Montana.

(e) Copies of these materials may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM 37. 59. 110
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37. 59. 110 NUTRITION SERVICES STANDARDS (1) Standardized nutritional risk assessment procedures as developed and defined in "Nutritional Problems, Codes, Criteria and References for Public Health Nutrition Services" (December 1986 edition) and "Weighing and Measuring Children: A Training Manual for Supervisory Personnel " must be used by all participating local WIC agencies, in a form and manner prescribed by the department as included in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), which is a comprehensive summary of applicable federal regulations (all of which are elsewhere incorporated in this subchapter), procedures, and forms used by the department.

(2) Local agencies shall arrange for standard nutrition education contacts between local agencies and participating clients, which include appropriate type and number of contacts for high risk and lower risk participants as described in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), and shall utilize nutrition education materials which have met the criteria in "E. M. P. O. W. E. R. -- Evaluate Materials to Promote Optimal Use of WIC Education Resources" (April 1985 edition).

(3) Policies and procedures for authorizing specific WIC foods based on cost, availability, nutritional value, and participant acceptance are set forth in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition).

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(4) The department hereby adopts and incorporates herein by reference the following documents:

(a) "Nutritional Problems, Codes, Criteria and References for Public Health Nutrition Services" (December 1986 edition), which is a document developed to provide uniform nutrition risk criteria classification in the state of Montana, for use in the Montana WIC program to record assessment of client nutrition conditions and to determine eligibility for program benefits;

(b) the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition);

(c) "Weighing and Measuring Children: A Training Manual for Supervisory Personnel" (November 1980 edition), which is a federal department of health and human services reference publication concerning standardized methods for weighing and measuring children; and

(d) "E. M. P. O. W. E. R. -- Evaluate Materials to Promote Optimal Use of WIC Education Resources" (April 1985 edition), which is a Massachusetts department of public health publication concerning evaluation of nutrition education materials.

(e) Copies of these documents may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

Subchapter 2

Local Agency Eligibility and Participation

37. 59. 201 SELECTION OF LOCAL AGENCIES (1) In selecting new local agencies, the department will apply the criteria in 7 CFR 246.5(a) through (e) together with the following criteria:

(a) whether the program is located to be accessible to participants;

(b) whether the program exhibits sufficient financial integrity and solvency to assure its ability to continue program operations; and

(c) whether there are documented, written procedures for making referrals to and coordinating with the following services and programs which are operating in the service area of the local agency: prenatal care, immunizations, postnatal care, family planning, well-child services, early periodic screening and development testing, schools, dental screening, private physicians, health maintenance organizations, hospitals, expanded food and nutrition education program, community relief agencies, USDA food stamp program, handicapped children's services, and maternal and child health services.

(2) The department hereby adopts and incorporates herein by reference 7 CFR 246.5(a) through (e), which is a federal agency rule setting forth requirements and procedures for local agency selection and the expansion, reduction, and disqualification of participating local agencies. Copies of 7 CFR 246.5(a) through (e) may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; TRANS, from DHES, 2001 MAR p. 982.)

37. 59. 202 AGREEMENTS WITH LOCAL AGENCIES (1) The department hereby adopts and incorporates herein by reference 7 CFR 246. 6, which is a federal agency rule setting forth terms and requirements for agreements between the department and local agencies. Copies of 7 CFR 246. 6 may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; TRANS, from DHES, 2001 MAR p. 982.)

37. 59. 203 PERIODIC REVIEW AND DISQUALIFICATION OF LOCAL AGENCIES (1) The department shall conduct periodic reviews of the qualifications of authorized local agencies under its jurisdiction. In conducting such reviews, the department shall consider the program's history of prior program performance and the factors listed in (2) of this rule. Based upon the results of such reviews, the department may make appropriate adjustments among the participating local agencies, including the disqualification of a local agency when the department determines that another local agency can operate the program more effectively and efficiently. The department shall implement the procedures established in (3) of this rule when disqualifying a local agency.

(2) The department may disqualify a local agency upon consideration of:

- (a) noncompliance with program rules;
- (b) sufficiency of department funds to support the continued operation of all its existing local agencies at their current participation level;
- (c) whether, following a review of local agency credentials in accordance with (4) of this rule, another local agency can operate the program more effectively and efficiently;
- (d) the availability of other community resources to participants and the cost efficiency and cost effectiveness of the local agency in terms of both food and administrative and program services costs;
- (e) the percentages of participants in each priority level being served by the local agency and the percentage of need being met in each participant category;
- (f) the relative position of the area or special population served by the local agency in the affirmative action plan;
- (g) the local agency's place in the priority system established in 7 CFR 246.5(d)(1); or
- (h) the capability of another local agency or agencies to accept the local agency's participants.

(3) When disqualifying a local agency under the program, the department shall:

- (a) make every effort to transfer affected participants to another local agency without disruption of benefits;
- (b) provide the affected local agency with written notice not less than 60 days in advance of the pending action, which notice shall include an explanation of the reasons for disqualification, the date of disqualification, and, except in cases of the expiration of a local agency's agreement, the local agency's right to appeal as set forth in 7 CFR 246.18; and

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(c) ensure that the action is not in conflict with any existing written agreements between the department and the local agency.

(4) The department hereby adopts and incorporates herein by reference the following:

(a) 7 CFR 246.18, which is a federal agency rule setting forth the notice and hearing procedures for local agencies and food vendors who are denied participation or are disqualified from the program; and

(b) 7 CFR 246.5(d)(1), which is a federal agency rule setting forth the priority system for selection of local agencies.

(c) Copies of 7 CFR 246.18 and 7 CFR 246.5(d)(1) may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; TRANS, from DHES, 2001 MAR p. 982.)

Subchapter 3

Food Vendor Eligibility and Participation

37. 59. 301 REQUIREMENTS FOR LOCAL AGENCY SELECTION OF FOOD VENDORS (1) In selecting food vendors to participate in the program, local agencies shall apply the requirements of 7 CFR 246.12(e) through (o), and the following criteria:

(a) whether the place of the vendor's business is permanent; no stores on wheels may be allowed;

(b) whether the vendor stocks and maintains appropriate quantities of authorized WIC foods;

(c) whether the vendor is accessible to WIC clients;

(d) whether the vendor has been disqualified from the USDA food stamp program;

(e) whether the vendor has a valid, current license from each appropriate Montana state agency, as may be required by law.

(2) The department hereby adopts and incorporates herein by reference the following:

(a) 7 CFR 246.12(e) through (o), which is a federal agency rule setting forth the authorization of food vendors; requirements for food vendor agreements; periodic review of food vendor qualifications; guidelines for food vendor training; monitoring of food vendors; participant and vendor complaints and sanctions; requirements for control and reconciliation of food instruments; and payment to food vendors.

(b) Copies of 7 CFR 246.12(e) through (o) may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; TRANS, from DHES, 2001 MAR p. 982.)

37. 59. 302 AGREEMENTS WITH FOOD VENDORS (1) The department hereby adopts and incorporates herein by reference 7 CFR 246. 12(f), which is a federal agency rule setting forth terms and requirements for agreements between the department and food vendors. Copies of this document may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; TRANS, from DHES, 2001 MAR p. 982.)

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37. 59. 303 PERIODIC REVIEW AND DISQUALIFICATION OF FOOD VENDORS (1) The department (or local agency in consultation with the department), before re-authorization, shall conduct periodic reviews of the operations of participating food vendors. In conducting such reviews, the department or local agency may utilize an "educational buy" or a "compliance buy" as described in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), and shall consider the following:

- (a) a review of local agency monitoring reports;
- (b) results of one or more on site visits;
- (c) shared information from the Montana food stamp officer-in-charge;
- (d) file review of one-half of the total currently authorized vendors;
- (e) on site follow-up to (1)(a) and (d) above when warranted by incomplete information or complaint;
- (f) whether the vendor demonstrates ability to meet Montana WIC program requirements, as evidenced by performance during the current agreement; and
- (g) whether patterns of participant use demonstrate compliance with the program.

(2) Based upon such review, the department may take an adverse action (other than a warning letter) against the vendor, including disqualification of the food vendor from participation in the program.

(3) When taking an adverse action (other than a warning letter) against a vendor, including disqualification of a food vendor from the program, the department shall provide the affected vendor with written notice not less than 15 days in advance of the pending action which notice must include the reasons for the adverse action, the date of adverse action, and, except in cases of the expiration of the vendor's WIC agreement, the vendor's right to appeal as set forth in 7 CFR 246.18.

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(4) The department hereby adopts and incorporates herein by reference the following:

(a) the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department; and

(b) 7 CFR 246.18, which is a federal agency rule setting forth the notice and hearing procedures for local agencies and food vendors who are denied participation or are disqualified from the program.

(c) Copies of these documents may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

Subchapter 4

Appeal Procedures

37. 59. 401 APPEALS BY PROGRAM PARTICIPANTS (1) An individual who has been denied participation or been disqualified from the program by the local agency may request a fair hearing by contacting either the local agency or the department no later than 60 days after the local agency's adverse action has been communicated to the individual.

(2) The processing of such requests and the conduct of such hearing shall be in accordance with 7 CFR 246.9 and applicable sections of the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department.

(3) The department hereby incorporates herein by reference the following:

(a) 7 CFR 246.9, which is a federal agency rule setting forth fair hearing procedures for individuals who are denied participation or disqualified from the program; and

(b) the fair hearing requirements of the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department.

(c) Copies of the above documents may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

37. 59. 402 APPEALS BY LOCAL AGENCIES AND FOOD VENDORS

(1) A local agency or a food vendor which is denied participation or, during the course of a contract or agreement, is disqualified or its participation is otherwise adversely affected may request a fair hearing before the department. Expiration of a contract or agreement with a food vendor or local agency is not subject to appeal.

(2) The issuance of notice of adverse action, the processing of fair hearing requests, and the conduct of such hearings shall be in accordance with the provisions of 7 CFR 246.18 and applicable sections of the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition).

(3) The department hereby adopts and incorporates herein by reference the following:

(a) 7 CFR 246.18, which is a federal agency rule setting forth the notice and hearing procedures for local agencies and food vendors who are denied participation or are disqualified from the program; and

(b) the fair hearing requirements for local agencies and food vendors set forth in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department.

(c) Copies of 7 CFR 246.18 and the local agency and food vendor fair hearing provisions of the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition) may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P. O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 1988 MAR p. 1528, Eff. 7/15/88; AMD, 1990 MAR p. 227, Eff. 1/26/90; TRANS, from DHES, 2001 MAR p. 982.)

Chapters 60 and 61 reserved